

**The National Association of
Telecommunications Officers and Advisors®**

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March 19, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
224 12th Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation, WC Docket 04-36

Dear Ms. Dortch:

On May 18, 2005, at the request of the Commission, Cheryl Leanza on behalf of the National League of Cities, Jeff Arnold on behalf of the National Association of Counties, Ron Thaniel on behalf of the United States Conference of Mayors, Jim Horwood on behalf of the Alliance for Community Media, Nick Miller and the undersigned on behalf of the National Association of Telecommunications Officers and Advisors met with Eric Bash and Rudy Brioché in the office of Commissioner Jonathan Adelstein with respect to the role of local government in the franchising of video service providers.

During the course of the meeting, the participants presented the attached document relating to the Relevance of Title VI to the Future of Telecommunications Policy. Such document was prepared not for the purpose of the meeting, but was used in furtherance of the discussions pertaining to the role of local government in the management and control of public rights-of-way and the difference between that role under Title II and Title VI of the Act. Further, in response to questions raised by the staff, the undersigned shared with the staff the attached pages of a presentation made by SBC on November 11, 2004 pertaining to its Project Lightspeed.

Pursuant to Commission rules, please include a copy of this notice in the record for the proceeding noted above.

Sincerely,

Libby Beaty
Executive Director, NATOA

cc: Eric Bash
Rudy Brioché
Nick Miller
Jim Horwood
Jeff Arnold
Ron Thaniel
Cheryl Leanza



The Relevance of Title VI to the Future of Communications Policy

Title VI of the Communications Act has governed cable television for 20 years. In creating this policy Congress ensured that crucial social obligations would be met. These obligations are comparable to those placed on other video programming providers, such as broadcasting and satellite television or any other communications provider.

Title VI is largely a success, is technology-neutral, and respects federalism. Title VI preserves the authority of local government, but does not mandate economic regulation at the local level. Through the franchise process each locality's elected leaders are able to determine what is in the best interests of their community.

Far from local involvement being a barrier to deployment, in less than 10 years, cable broadband service has been made available to 91% of homes passed by cable and 60% of all broadband subscribers receive service through cable. This success is, in many ways, a result of sound compromises and policy in Title VI.

➤ **Title VI recognizes the complimentary roles of federal, state and local government.**

Our nation's communications policy has traditionally recognized the complimentary roles and proper authority of all levels of government. In Title VI, Congress acknowledged the concurrent jurisdiction and importance of state and local government (47 USC §§ 521(3) & 556).

➤ **Under Title VI local government is responsible for preventing economic redlining and promoting deployment.**

Cable service is available to 97% of the 109.6 million television households in the United States. Title VI prohibits economic redlining and leaves to local government the responsibility of ensuring the cable system "become[s] capable of providing cable service to all households in the franchise area" in a "reasonable period of time" while preserving local government's flexibility to establish service areas (47 USC §§ 541(a)(3) & 541(a)(4)(A)).

Title VI also provides for local government requirements that schools, libraries and government buildings be connected through the cable network by allowing for the creation of institutional networks (I-Nets) (47 USC §§ 531(b) & 541(b)(3)(D)).

➤ **Title VI acknowledges state and local ownership and control over property and compensation for the use of public rights-of-way.**

Public property is held in trust by local government, and compensation for this property is appropriate and necessary for sound fiscal management.

Title VI recognizes local government's role and management over the public rights-of-way, (47 USC § 541(a)(2)). In exchange for broad access to both public rights-of-way and private easements, Title VI allows for the collection of a fee of up to 5% of a cable operator's gross revenue (47 USC § 541(a)(2)).

➤ **Title VI acknowledges local government's broad police powers, which allow for the protection of public health, safety and welfare.**

The broad police powers of local government allow for the protection of the public health, safety and welfare of a community's citizens. Communications policy should not abrogate the authority of local government or its vital role over consumer protection, local code enforcement, and emergency response and notification. Title VI preserves this federalist system generally (47 USC § 556(a)), and allows local government to ensure the safety of physical infrastructure (47 USC § 552(a)(1) & (2)), and require carriage of local emergency alerts (47 USC §§ 544 & 546).

➤ **Title VI supports localism and a vital democracy.**

Congress has assigned an important democratic role to broadcasting and the provision of video programming. From broadcasting and cable's obligations to federal candidates to satellite broadcasting's noncommercial set-aside, Congress has recognized the vital role that media plays in a democracy.

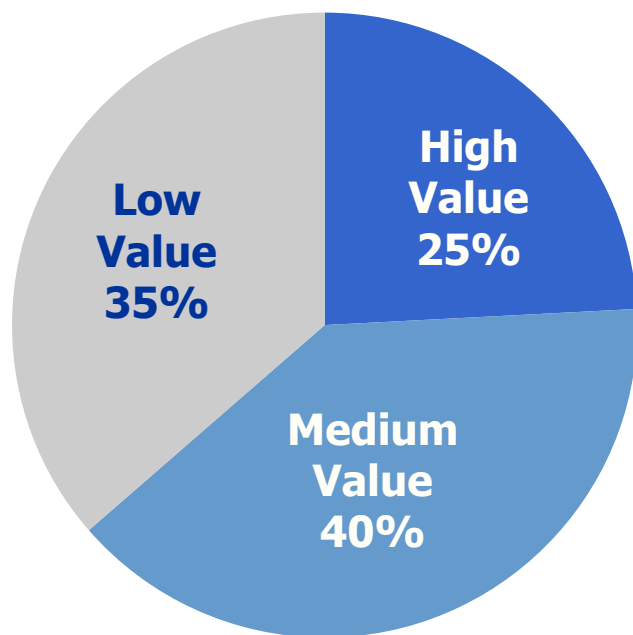
Title VI supports this democratic role for cable television as well. It enables local government to "assure that cable systems are responsive to the needs and interests of the local community." (47 USC § 521(2)), including Public, Education and Government (PEG) access channels (47 USC §§ 531(a), 531(b) & 541(a)(4)(B)). Where they are implemented, PEG is the only guaranteed opportunity for local elected officials to speak directly to their constituents, for citizens to monitor local government meetings, and for educational use, such as supplementary educational programming for grade K-12 students. These channels also help to foster communication among a community's citizens.

➤ **Title VI supports responsive consumer protection, allowing local government to address consumer concerns.**

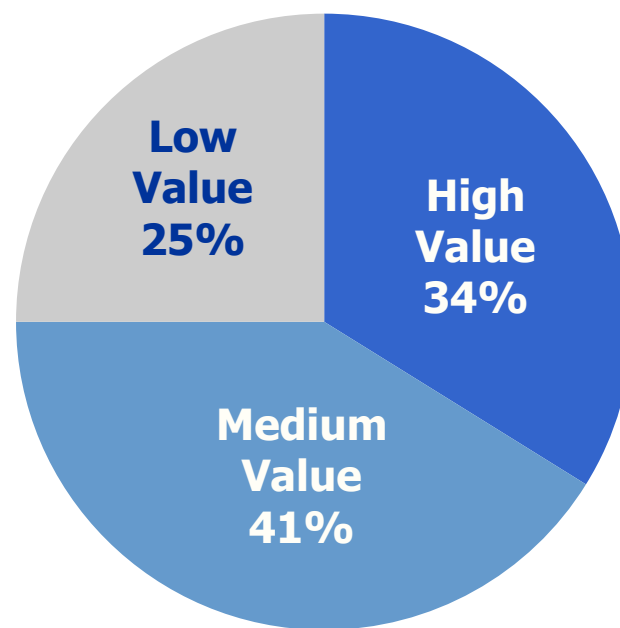
Title VI allows local government to impose and enforce basic consumer protection safeguards (47 USC §§ 552 & 551), and to ensure that cable operators demonstrate adequate financial, technical, and legal qualifications (§541(a)(4)(C)) necessary to provide the promised services. Where competition is not present, local government can impose limited rate regulation (47 USC § 543). Federal regulators have neither the time nor resources to enforce these safeguards. Title VI also imposes some of the best privacy protection in federal law (47 USC § 551).

High-Value Customers

Total Customer Household Segmentation

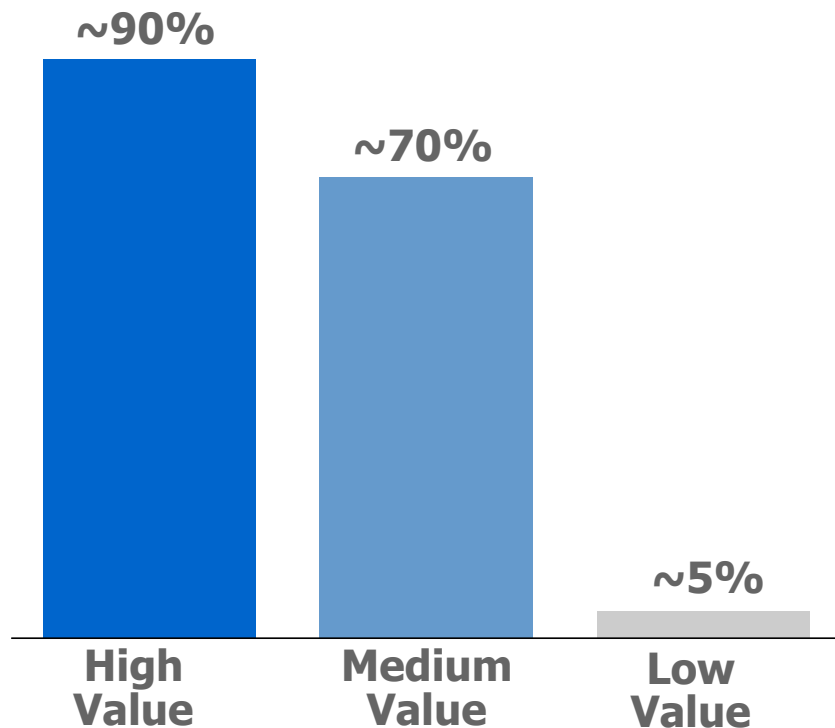


% of Customer \$ Spend Attributed to Each Segment



High-Value Customer Coverage

Percent of Each Segment Covered by Project Lightspeed



- FTTN is **efficient** in how it can be deployed
- Lightspeed deployment will cover approximately **90%** of high-value and **70%** of medium-value customers